

16A Am. Jur. 2d Constitutional Law § 624

American Jurisprudence, Second Edition February 2021 Update

Constitutional Law

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IX. Fundamental Constitutional Rights and Privileges

C. Particular Fundamental Constitutional Rights

2. Life, Liberty, and Pursuit of Happiness

b. Liberty Interest in Specific Matters

§ 624. Rights in public vehicles and places for purposes of liberty interest of Due Process Clause

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 1069

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[Validity, construction, and application of loitering statutes and ordinances. 72 A.L.R.5th 1](#)

Under the constitutional guarantee of liberty one may, under normal conditions, move at his or her own inclination along the public highways or in public places, and while conducting himself or herself in an orderly and decent manner, neither interfering with nor disturbing another's rights, one will be protected, not only in his or her person, but in his or her safe conduct. For example, the right of a citizen to drive on a public street with freedom from police interference, unless he or she is engaged in suspicious conduct associated in some manner with criminality, is a fundamental constitutional right. However, the liberty of each individual in a public vehicle or public place is subject to reasonable limitations in relation to the rights of others.

Statutes or ordinances regulating loitering, vagrancy, breach of the peace, or disorderly conduct in public places, challenged on due process grounds, have been sustained in some cases and invalidated in others, depending upon the language and scope of the provisions. A person is free to live on the street if that person chooses to do so; a person may not

be held against her will merely to improve her standard of living or because society may find it uncomfortable to see such people on the street.⁸ Curfew ordinances affecting juveniles and children have been held constitutional in some cases,¹⁰ although there is much authority to the contrary, and there is an increasing tendency to hold them unconstitutional.¹¹

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Footnotes

¹ Pinkerton v. Verberg, 78 Mich. 573, 44 N.W. 579 (1889); City of St. Louis v. Gioner, 210 Mo. 502, 109 S.W. 30 (1908) (loitering on the street).

² People v. Horton, 14 Cal. App. 3d 930, 92 Cal. Rptr. 666 (5th Dist. 1971).

³ Public Utilities Commission of District of Columbia v. Pollak, 343 U.S. 451, 72 S. Ct. 813, 96 L. Ed. 1068 (1952).

⁴ Bullock v. City of Dallas, 248 Ga. 164, 281 S.E.2d 613 (1981).

As to regulations regarding loitering, generally, see Am. Jur. 2d, Highways, Streets, and Bridges § 197.

As to statutes regulating loitering, generally, see Am. Jur. 2d, Vagrancy and Related Offenses §§ 3 to 11.

⁵ Am. Jur. 2d, Vagrancy and Related Offenses § 2.

⁶ Am. Jur. 2d, Breach of Peace and Disorderly Conduct § 14.

⁷ Am. Jur. 2d, Breach of Peace and Disorderly Conduct §§ 33, 34.

⁸ State ex rel. De Concini v. Gatewood, 10 Ariz. App. 274, 458 P.2d 368 (1969); Walker v. District of Columbia, 196 A.2d 92 (D.C. 1963); People v. Merolla, 9 N.Y.2d 62, 211 N.Y.S.2d 155, 172 N.E.2d 541 (1961).

⁹ Abney v. U. S., 451 A.2d 78 (D.C. 1982); In re Long, 237 Ill. App. 3d 105, 180 Ill. Dec. 182, 606 N.E.2d 1259 (2d Dist. 1992).

However, an ordinance prohibiting sleeping outdoors in a public place or in a motor vehicle parked in a public place is not facially overbroad, as the ordinance does not reach a substantial amount of constitutionally protected conduct. Whiting v. Town of Westerly, 743 F. Supp. 97 (D.R.I. 1990), *aff'd*, 942 F.2d 18 (1st Cir. 1991).

¹⁰ People in Interest of J.M., 768 P.2d 219 (Colo. 1989); City of Milwaukee v. R.F., 145 Wis. 2d 24, 426 N.W.2d 329 (1988).

¹¹ McColester v. City of Keene, 586 F. Supp. 1381 (D.N.H. 1984); K.L.J. v. State, 581 So. 2d 920 (Fla. 1st DCA 1991); City of Maquoketa v. Russell, 484 N.W.2d 179 (Iowa 1992); Allen v. City of Bordentown, 216 N.J. Super. 557, 524 A.2d 478 (Law Div. 1987).

As to municipal curfew laws, generally, see Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 416.